

Committee on Judicial Ethics
Teleconference
Wednesday, August 19, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert Devlin and Judge Socrates Mihalakos. Staff present: Martin R. Libbin, Esq., Secretary, Viviana L. Livesay, Esq., Assistant Secretary (after start of meeting).

MINUTES

- I. With a quorum present, Justice Schaller called the meeting to order at 9:32 a.m. Although publicly noticed, no members of the public attended.
- II. The participating members of the Committee unanimously approved the draft Minutes of the July 27, 2009 meeting.
- III. The four participating members of the Committee considered Judicial Ethics Informal Opinion 2009-25 concerning whether a Judicial Official may serve on the advisory board of an organization, operated by a for-profit business, designed to serve as a referral and information sharing organization for “prominent and experienced” attorneys in private practice where membership in the organization is limited to attorneys who meet certain specified criteria and where the goal of the organization is to assist the members to obtain and retain good clients and profitable business.

Based upon the information provided, the participating Committee members determined that the organization does not qualify as a Canon 4 entity devoted to the improvement of the law, the legal system or the administration of justice because it is a private organization conducted for the benefit of its members, specifically designed to develop business and referrals, and to conduct fee-producing programs. The organization, therefore, is within the ambit of Canon 5 activities. Based upon the facts relating to the organization that is the subject of this inquiry, in particular the fact that the Judicial Official would be supporting and promoting the obtaining and retaining of good clients and profitable business of a group of lawyers in private practice, the Committee determined that serving on the advisory board would violate Canon 2’s proscription on lending the prestige of judicial office to advance the private interests of others. In addition, the activity does not fall within the scope of permitted activities under Canon 5 and, accordingly, would violate the spirit, if not the letter, of Canon 5’s restrictions on extrajudicial activities. The Committee noted that the activity of information-sharing among members alone would not necessarily violate the Canons. Finally, the Committee observed that, consistent with its decision in this matter, Rule 3.11 of the proposed revised Code of Judicial Conduct explicitly would ban service as an officer, director, manager, general partner, or advisor of any business except for a business closely held by the judge or members

of the judge's family or a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

IV. The meeting adjourned at 9:49 a.m.